

# State of South Dakota

## EIGHTY-FIFTH SESSION LEGISLATIVE ASSEMBLY, 2010

472R0635

### SENATE BILL NO. 158

Introduced by: Senators Jerstad, Adelstein, Merchant, Miles, and Nelson and Representatives Thompson, Blake, Bolin, Curd, Feinstein, Gibson, Hoffman, Jensen, Lange, Lederman, Lucas, McLaughlin, Vanderlinde, and Wismer

1 FOR AN ACT ENTITLED, An Act to provide certain requirements for tanning facilities.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms used in this Act mean:

4 (1) "Phototherapy device," equipment that emits ultraviolet radiation and is used in  
5 treating disease;

6 (2) "Tanning device," equipment that emits electromagnetic radiation having  
7 wavelengths in the air between two hundred and four hundred nanometers and that  
8 is used for the tanning of human skin and any equipment used with that equipment,  
9 including protective eyewear, timers, and handrails. However, the term, tanning  
10 device, does not include a phototherapy device used by a physician;

11 (3) "Tanning facility," a place or business that provides persons access to a tanning  
12 device.

13 Section 2. Each tanning facility shall give to each of its customers written notice of all of the  
14 following:



- 1       (1)    Failure to wear the eye protection provided by the tanning facility may damage the  
2           customer's eyes and cause cataracts;
- 3       (2)    Overexposure to a tanning device causes burns;
- 4       (3)    Repeated exposure to a tanning device may cause premature aging of the skin and  
5           skin cancer;
- 6       (4)    Abnormal skin sensitivity or burning of the skin while using a tanning device may  
7           be caused by the following:
  - 8           (a)    Certain foods;
  - 9           (b)    Certain cosmetics;
  - 10           (c)    Certain medications, including tranquilizers, diuretics, antibiotics, high blood  
11               pressure medicines, and birth control pills; and
  - 12           (d)    Certain diseases;
- 13       (5)    Any person who takes a drug should consult a physician before using a tanning  
14           device.

15       Section 3. Each tanning facility shall prominently display a sign in each area where a tanning  
16       device is used. The warning sign shall convey the following directions and information:

- 17       (1)    Follow instructions;
- 18       (2)    Avoid too frequent or too lengthy exposure. Like exposure to the sun, use of a  
19           tanning device can cause eye and skin injury and allergic reactions. Repeated  
20           exposure can cause chronic sun damage, which is characterized by wrinkling,  
21           dryness, fragility and bruising of the skin, and skin cancer;
- 22       (3)    Wear food and drug administration-approved protective eyewear;
- 23       (4)    Ultraviolet radiation from tanning devices will aggravate the effects of the sun, so do  
24           not sunbathe during the twenty-four hours immediately preceding or immediately

1 following the use of a tanning device;

2 (5) Medications and cosmetics may increase your sensitivity to ultraviolet radiation.

3 Consult a physician before using a tanning device if you are using medications, have  
4 a history of skin problems, or believe that you are especially sensitive to sunlight.

5 Women who are pregnant or using birth control pills and who use a tanning device  
6 may develop discolored skin;

7 (6) If your skin does not tan when exposed to the sun it is unlikely that your skin will tan  
8 when exposed to this tanning device.

9 Section 4. A tanning facility's compliance with the requirements of sections 2 and 3 of this  
10 Act does not relieve the owner or any employee of the tanning facility from liability for injury  
11 sustained by a customer from the use of a tanning device.

12 Section 5. Each tanning facility shall post a sign in each area where a tanning device is used  
13 stating the date on which each fluorescent tube in that tanning device was last replaced. The  
14 tanning facility shall maintain a record of the date on which each fluorescent tube is replaced.

15 Section 6. No owner or employee of a tanning facility may claim, or distribute materials that  
16 claim, that using a tanning device is free of risk.

17 Section 7. The owner of a tanning facility shall ensure that all of the following requirements  
18 are fulfilled:

19 (1) A customer under eighteen years of age may not be permitted to use the tanning  
20 facility until the customer provides the facility with written consent of a parent or  
21 legal guardian to use the tanning facility. The consent shall indicate that the parent  
22 or legal guardian has read the warnings required by this Act and that the customer  
23 agrees to wear food and drug administration-approved protective eyewear. The parent  
24 or legal guardian shall provide a notarized statement of consent or sign the consent

1 form in the presence of the owner of the tanning facility or an employee responsible  
2 for the operation of the tanning device of the facility. The written consent form  
3 expires twelve months from the date signed. A customer under the age of fourteen  
4 years may not utilize a tanning device at a tanning facility without a written order  
5 from a physician licensed in this state and without being accompanied by a parent or  
6 legal guardian for every use of the tanning facility;

7 (2) During operating hours there is present at the tanning facility a trained operator who  
8 is able to inform customers about, and assist customers in, the proper use of tanning  
9 devices;

10 (3) Each tanning bed is properly sanitized after each use;

11 (4) Properly sanitized and securely fitting food and drug administration-approved  
12 protective eyewear that protects the wearer's eyes from ultraviolet radiation and  
13 allows enough vision to maintain balance is made available to the customer;

14 (5) A customer is not allowed to use a tanning device unless the customer agrees to use  
15 food and drug administration-approved protective eyewear;

16 (6) Each customer is shown how to use such physical aids as handrails and markings on  
17 the floor to determine the proper distance from the tanning device;

18 (7) A timing device that is accurate within ten percent is used;

19 (8) Each tanning device is equipped with a mechanism that allows the customer to turn  
20 the tanning device off;

21 (9) Each customer is limited to the maximum exposure time recommended by the  
22 manufacturer;

23 (10) Customers are not allowed to use a tanning device more than once every forty-eight  
24 hours;

(11) The interior temperature of the tanning facility does not exceed one hundred degrees Fahrenheit; and

(12) The written consent form provided pursuant to subdivision (1) of this section is retained for three years or until the customer signs a new consent form.

A violation of this section is a Class 2 misdemeanor.

Section 8. A user of a tanning facility shall do all of the following:

(1) Immediately before the customer's first use of a tanning facility in a year, sign a statement acknowledging that he or she has read and understands the notice required pursuant to section 2 of this Act and the sign required pursuant to section 3 of this Act and specifying that the customer agrees to use food and drug administration-approved protective eyewear;

(2) Use food and drug administration-approved protective eyewear at all times while using a tanning device.

Section 9. If a health care provider treats a patient for a sunburn injury and determines, in the exercise of professional judgment, that the injury occurred as a result of using a tanning device at a tanning facility, the health care provider shall report the circumstances of the injury to the Department of Health. A health care provider making or not making a report in good faith pursuant to this section is immune from liability for making or not making a report.

Section 10. A municipality may adopt an ordinance to regulate tanning facilities as long as the requirements in the ordinance are no less stringent than the requirements provided in this Act. A municipality may adopt an ordinance that establishes requirements that are more stringent than the requirements provided in this Act.